



ORIGINAL

THE ARIZONA CORPORATION COMMISSION

EXCEPTION

COMMISSIONERS

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BRENDA BURNS

IN THE MATTER OF THE APPLICATION
OF ARIZONA-AMERICAN WATER
COMPANY, AN ARIZONA
CORPORATION, FOR A
DETERMINATION OF THE CURRENT
FAIR VALUE OF ITS UTILITY PLANT
AND PROPERTY AND FOR INCREASES
IN ITS RATES AND CHARGES BASED
THEREON FOR UTILITY SERVICE BY
ITS ANTHEM WATER DISTRICT AND
ITS SUN CITY WATER DISTRICT.

Docket No. SW-01303A-09-0343

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OF ARIZONA-AMERICAN WATER
COMPANY, AN ARIZONA
CORPORATION, FOR A
DETERMINATION OF THE CURRENT
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AND PROPERTY AND FOR INCREASES
IN ITS RATES AND CHARGES BASED
THEREON FOR UTILITY SERVICE BY
ITS ANTHEM/ AGUA FRIA
WASTEWATER DISTRICT, ITS SUN
CITY WASTEWATER DISTRICT AND
ITS SUN CITY WEST WASTEWATER
DISTRICT.

Docket No. ~~SW-01303A-09-0343~~

ANTHEM COMMUNITY
COUNCIL'S EXCEPTIONS TO
THE RECOMMENDED OPINION
AND ORDER

AZ CORP COMMISSION
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1 The Anthem Community Council, Inc. ("Anthem") hereby submits its Exceptions to
2 the Recommended Opinion and Order ("ROO") issued April 10, 2012 by Administrative
3 Law Judge Jibilian in the above-captioned and docketed proceedings ("instant
4 proceedings") to address certain issues in the ROO and respectfully urges the Arizona
5 Corporation Commission (the "Commission") to adopt appropriate amendments to the
6 ROO at the Open Meeting ordering the immediate deconsolidation of the Anthem/Agua
7 Fria Wastewater District and establishing appropriate deconsolidated rates.

8 **I. INTRODUCTION.**

9 For the reasons summarized in Section II below, and more fully discussed in Section
10 III below, Anthem respectfully urges the Commission to reject the ROO as written and
11 instead issue an opinion and order (i) providing for the immediate deconsolidation of the
12 Anthem/Agua Fria Wastewater District and (ii) adopting stand-alone rates for the resulting
13 Anthem wastewater district and Agua Fria wastewater district, utilizing Mr. Neidlinger's
14 proposed revenue transition plan. In the event that the Commission decides to adopt
15 Anthem's recommendations, a form of amendments to the ROO is attached as Attachment
16 1 hereto for the Commission's convenience and consideration.

17 **II. EXCEPTIONS.**

18 As it applies to the 8,800 Anthem wastewater customers in the Anthem/Agua Fria
19 Wastewater District, the ROO's recommendation to deny deconsolidation of the
20 Anthem/Agua Fria Wastewater District is unfair and unreasonable. In the following
21 Section III of these Exceptions, Anthem will discuss its following objections to the ROO:

- 22 • Prompt deconsolidation of the Anthem/Agua Fria Wastewater
23 District, as a matter of "good public policy," is explicitly
24 contemplated in Decision No. 72047. Denying or delaying
deconsolidation cannot be reconciled with the express language of
Decision No. 72047.
- 25 • The ROO impairs a substantial portion of the purpose and intent of
26 the settlement agreement approved by the Commission and
subsumed in Decision No. 72047.
- 27 • The Commission and the ROO recognize the importance of properly
28 assigning cost responsibility. Yet, the ROO does not take any step
in that direction. In this case, the ROO makes the perfect the enemy

of the good by failing to implement appropriate relief for 8,800 utility customers in favor of waiting for a consolidation scenario that has already been rejected by the Commission in the instant proceedings and has little hope of imminent adoption.

- Article 15, Section 3 of the Arizona Constitution authorizes and requires the Commission to prescribe “just and reasonable rates and charges.” Indefinitely forcing Anthem wastewater ratepayers to continue to pay an annual \$2.4 million subsidy for the purpose of providing artificially lower rates to Agua Fria wastewater customers is neither just nor reasonable.
- There is no actual evidence in the record that the \$2.4 million annual subsidy being paid by the Anthem wastewater ratepayers on behalf of the Agua Fria wastewater ratepayers may “eventually zero out.” Further, the ROO ignores the massive subsidy payments accumulating in each year that such a zeroing out continues to be merely speculative.
- The facts do not support the inclusion of Anthem in the Anthem/Agua Fria Wastewater District for ratemaking purposes. Anthem is not consolidated with the Agua Fria area for any other purpose. On the other hand, the Agua Fria wastewater district operates as a consolidated business unit and comprises a consolidated water district. Therefore, deconsolidation in this instance is not arbitrary.
- The ROO incorrectly states that the geographical configuration of the Agua Fria service area was not known by the Commission at the time the settlement agreement was approved by the Commission.
- The adoption of Dan Neidlinger’s phase-in plan mitigates, to some extent, the significant rate increases resulting from deconsolidation of the Anthem/Agua Fria Wastewater District.

III. DISCUSSION.

A. Prompt Deconsolidation of the Anthem/Agua Fria Wastewater District, as a Matter of “Good Public Policy,” Is Explicitly Contemplated in Decision No. 72047. Denying or Delaying Deconsolidation Cannot Be Reconciled with the Express Language of Decision No. 72047.

1. History of Proceedings.

By way of background, on July 2, 2009, Arizona-American Water Company, predecessor to EPCOR Water USA (together, the “Company”), filed a rate case application requesting, among other things, that the Commission allow an increase in water rates for its customers residing within the Anthem Water District of approximately 100% and an increase in wastewater rates for its customers residing within the Anthem/Agua Fria

1 Wastewater District of approximately 82%, based on a calendar 2008 test year.¹ A
2 substantial portion of the proposed increases arose from certain refund payments (the
3 "Disputed Refund Payments") made by the Company to Pulte Corporation pursuant to an
4 Agreement for the Villages At Desert Hills Water/Wastewater Infrastructure, dated
5 September 28, 1997, between Citizens Water Resources, as predecessor in interest to the
6 Company, and Del Webb Corporation, as predecessor in interest to Pulte, as amended.² In
7 order to resolve significant legal and equitable issues resulting from (i) the Company's
8 proposed immediate ratemaking recognition of the Disputed Refund Payments and
9 (ii) Anthem's alternative proposed revenue transition plan to mitigate the consequent rate
10 shock, during the Open Meeting on December 15, 2010, then Chairman Mayes invited all
11 of the parties³ to meet and attempt to reach a global settlement of these and other open
12 disputes.⁴ Several parties thereafter gathered in the hallway and went to the Utilities
13 Division's conference room to negotiate the various issues.

14 When the Open Meeting resumed consideration of the Company's rate request later
15 that same day, Mr. Thomas Broderick summarized the "critical" provisions of the two-page
16 settlement agreement which had been reached as "one overall package that the parties have
17 agreed to"⁵ in order to effect a "full and complete resolution"⁶ of the issues related to

18
19 ¹ Application of Arizona-American Water Company filed July 2, 2009. In Decision No. 72047, dated
20 January 6, 2011, the Commission ultimately authorized an 82% increase in water rates for the Company's
21 customers residing within the Anthem Water District and a 61% increase in wastewater rates for the
22 Company's customers residing within the Anthem/Agua Fria Wastewater District. In that regard, see the
23 Company's Final Rate Design Schedules.

24 ² Direct Testimony of Dan L. Neidlinger, [Phase I] Exh. Anthem-1 at 3-4. The Disputed Refund
25 Payments included a March 2007 \$3.1 million refund payment and a March 2008 \$20.2 million refund
26 payment.

27 ³ See Cross-Examination of Thomas Broderick, [Deconsolidation] Tr. 272:15-17 ("Any party to the case
28 at that point could have joined. The door was open. Any party in the room was welcome in there.")

⁴ See Chairman Kristin K. Mayes, *et. al*, [Open Meeting] Tr. 198:11-202:7. Commissioner Pierce,
Commissioner Newman, and Commissioner Kennedy also voiced support for a settlement among the
parties. See *id*.

⁵ Thomas Broderick, [Open Meeting] Tr. 205:11-13.

⁶ *Id.* at Tr. 206:19-21.

1 ratemaking recognition of the Disputed Refund Payments. As discussed in Section III.B
2 below, from Anthem's perspective, one of the critical objectives of the settlement
3 negotiations and agreement was immediate deconsolidation of the Anthem/Agua Fria
4 Wastewater District and the related establishment of stand-alone rates for the resulting
5 Anthem and Agua Fria wastewater districts. However, the negotiating parties recognized
6 that the Commission did not then have the requisite data necessary to immediately
7 determine and implement appropriate stand-alone rates. Therefore, the parties agreed to
8 request that the docket remain open in order to allow the Company to file the data
9 necessary for "initiation of the Anthem/Agua Fria deconsolidation proceeding".⁷

10 After a lengthy discussion and consideration of the settlement agreement,⁸ the
11 Commission voted unanimously to approve the following language for inclusion in its
12 opinion and order:

13 Good public policy requires the Commission to correctly assign cost
14 responsibility for all ratemaking components in as expeditious a
15 manner as possible, and deconsolidation of Anthem/Agua Fria
16 Wastewater District is consistent with such action. However, the
17 record does not include adequate rate base or operating income
18 information to immediately implement stand-alone rate designs for
19 the resulting Anthem Wastewater district and Agua Fria Wastewater
20 district at this time. Therefore, we will (i) approve the rates adopted
21 herein for Anthem/Agua Fria Wastewater district as a consolidated
22 district on an interim basis, and (ii) order the docket in the instant
23 proceedings to remain open for the sole purpose of considering the
24 design and implementation of stand-alone revenue requirements and
25 rate designs as agreed to in the settlement reached during the Open
26 Meeting for the Anthem Wastewater district and Agua Fria
27 Wastewater district as soon as possible. The Company shall file its
28 initial application no later than April 1, 2011.⁹ (Emphasis added)

24 ⁷ *Id.* at 205:19-24.

25 ⁸ Discussion of the settlement agreement appears at [Open Meeting] Tr. 202:10-247:4. Anthem urges the
26 Commissioners to read the Open Meeting transcript in order to refresh the Commissioners' memories
27 regarding the volatility of discussions regarding ratemaking treatment of the Disputed Refund Payments, the
28 wide range of proposed solutions, the need for a full and final settlement of the issues related to the
Disputed Refund Payments, the extraordinary efforts of the parties in achieving settlement, and the
Commission's acceptance of the settlement agreement.

⁹ Decision No. 72047, dated January 6, 2011 at 84, incorporating Pierce Amendment Number 1. In that

1 Thereafter, on April 1, 2011 the Company filed its compliance application (the
2 “Compliance Application”) setting forth the data needed to implement stand-alone rates for
3 the resulting Anthem wastewater district and Agua Fria wastewater district.

4 **2. The ROO Eviscerates Decision No. 72047.**

5 Without dispute, the Compliance Application demonstrates that a \$2.4 million
6 annual subsidy is being paid by the Anthem wastewater ratepayers for the benefit of the
7 Agua Fria wastewater ratepayers.¹⁰ Further, in response to data requests posed by the
8 Verrado Community Association, Inc. (“Verrado”) and Corte Bella Country Club
9 Association, Inc. (“Corte Bella”)¹¹ on the matter, the Company revealed that the main
10 factors contributing to the large disparity in deconsolidated rates are the “Northwest Valley
11 Regional Reclamation Facility, the Verrado Reclamation Facility and its expansion as well
12 as the Russell Ranch Reclamation Facility.”¹² By virtue of geographic separation and no
13 interconnection facilities, Anthem residents do not and cannot use the Northwest Valley
14 Regional Reclamation Facility (the “Northwest Plant”), the Verrado Reclamation Facility
15 or the Russell Ranch Reclamation Facility. Whereas, Agua Fria wastewater customers do
16 utilize them. Therefore, in order to implement the Commission’s specific directive to
17 assign “cost responsibility for ratemaking components in as expeditious manner as
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1 possible,”¹³ the Commission must at a minimum deconsolidate Anthem from the
2 Anthem/Agua Fria Wastewater District at this time. The question of whether additional
3 Commission action may be needed to fully assign cost responsibility as between the
4 remaining Agua Fria wastewater ratepayers is beyond the limited scope of these instant
5 proceedings, may not be determinable at this time, and in any event is not an issue that can
6 be solved through continued consolidation of the Anthem/Agua Fria Wastewater District.

7 Consolidation, by its very nature, does not assign cost responsibility for ratemaking
8 components. Therefore, the ROO’s recommendation to keep the Anthem/Agua Fria
9 Wastewater District fully consolidated entirely ignores the specific language of Decision
10 No. 72047 and does nothing to implement the Commission’s aforementioned directive.
11 Again, a little over a year ago the Commission opined that: “Good public policy requires
12 the Commission to correctly assign cost responsibility for all ratemaking components in as
13 expeditious a manner as possible, and deconsolidation of Anthem/Agua Fria Wastewater
14 District is consistent with such action.”¹⁴ It is thus troubling that deconsolidation, which
15 was specifically recognized as consistent with “good public policy” in a Commission
16 opinion and order a little over a year ago, now is suddenly “not in the public interest”¹⁵ in
17 the resulting compliance proceeding. Further, the Commission was explicit that the issue
18 of deconsolidation should be decided “in as expeditious a manner as possible” and the
19 further delay contemplated in the ROO is also entirely inconsistent with that instruction.

20 **B. The ROO Impairs a Substantial Portion of the Purpose and Intent of the**
21 **Settlement Agreement Approved by the Commission and Subsumed in**
22 **Decision No. 72047.**

23 **1. Deconsolidation was a critical aspect of the settlement agreement.**

24 Due to Anthem’s active participation in the underlying proceeding, Anthem was
25 aware that it shouldered a large portion of the revenue requirement associated with the

26 ¹³ Decision No. 72047 at 84.

27 ¹⁴ Decision No. 72047 at 84.

28 ¹⁵ ROO at 32.

1 Northwest Plant, knew that Anthem did not use the Northwest Plant, and knew that
2 deconsolidation would relieve Anthem wastewater customers from an undeserved burden.¹⁶
3 Therefore, from Anthem's perspective, achieving deconsolidation in a timely fashion was a
4 critical inducement for and aspect of the settlement agreement. The Commission and all
5 other parties to the above-captioned docket at the time of the December 15, 2010 Open
6 Meeting also understood and accepted that deconsolidation of the Anthem/Agua Fria
7 Wastewater District was vital to Anthem's willingness to support final settlement of the
8 contentious legal and equitable issues involving the Disputed Refund Payments.¹⁷ At that
9

10 ¹⁶ See Intervener Anthem Community Council's Initial Post-Hearing Brief, filed July 16, 2010 at 12-14,
11 19-20.

12 ¹⁷ See the below discussion at [Open Meeting] Tr. at [218:23-219:10] which includes acknowledgement
13 from then Chairman Mayes that the Commission was supporting deconsolidation in this instance. The
14 Commissioners may not have liked all aspects of the settlement agreement but they clearly understood
15 that they needed to vote for it and accepted the consequences.

15 Chairman Mayes: Okay. So I think everybody understands it. Just for the record I am going to support
16 the amendment, obviously, because it's got a lot of what I like in it. I do not like No. 8, and I just want
17 to be on the record as saying I think it's strange for this Commission to be supporting deconsolidation
18 when we ought to be supporting consolidation. And, Mr. Robertson, frankly I found your position also
19 weird, and I mean that in the best possible way, when you were supporting statewide consolidation. You
20 are from Tubac, exactly a town that has known the perverse results of being all on your own and having
21 to deal with a crisis situation all on your own, the rate shock that can occur when a system is all on its
22 own. So here you are advocating for deconsolidation, to put both Anthem and Agua Fria all on their
23 own, I guess, at a time when the state desperately needs to be looking at consolidation of systems.

20 Mr. Robertson: Chairman Mayes, since you characterize my position as weird, may I comment?

21 Chairman Mayes: Sure.

22 Commissioner Pierce: I thought it was a brilliant tidbit.

23 Mr. Robertson: There is no assurance that as an outcome of this proceeding, in fact, there will be
24 companywide rate consolidation on the Arizona-American system. There is the prospect that the
25 company will be directed to file a consolidation proposal in its next rate case embracing all of its
26 districts and having the appropriate supporting data, but we still don't know that that will be the ultimate
27 outcome, and there might be several years before there is a final decision on that. From my perspective
28 both in a hearing and in negotiations, you also try and seize the opportunities that are presented to you.
And if we were able to obtain deconsolidation for Anthem, vis-a-vis, Agua Fria, even if just for the next
few years before there is a final consolidation decision, we felt that was a worthy objective. And as a
result, that is one of the parts of the settlement agreement that is very important to the Anthem
community. I mentioned there were several interrelated parts. As either Mr. Campbell or Mr. Broderick
said, it is one complete deal, and it certainly is from my perspective. So if my position is weird, I hope

1 time, Mr. Lawrence V. Robertson, Jr. explained to the Commissioners that Anthem's
2 counsel were authorized "to support this settlement as a complete package" and to forego
3 continuing to press Anthem's compelling arguments against recognizing the Disputed
4 Refund Payments for ratemaking purposes, because of the gains that Anthem would make
5 in other areas under the settlement agreement.¹⁸ More specifically, Mr. Robertson stated
6 that even if the Commission thereafter ordered company-wide consolidation at some future
7 date, deconsolidation of the Anthem/Agua Fria Wastewater District in the interim, even if
8 just for few years, was (i) a worthy objective, (ii) very important to the Anthem
9 community, and (iii) an interrelated part of the complete settlement deal. Subsequently,
10 Mr. Broderick similarly recalled Anthem's request for deconsolidation was "an absolutely
11 adamant position by the Anthem Community Council. We would not have reached a
12 settlement that afternoon had we not agreed to provide the information in support of a
13 deconsolidation proceeding."¹⁹

14 2. The Commission supported deconsolidation.

15 Not only did the Commission and the parties who chose to participate in the
16 settlement discussions fully understand the importance of the deconsolidation provisions

17
18 that my comments at least explain how I got there.

19 Chairman Mayes: No, I understand. I just think I just think that we are not all in it for ourselves. We
20 should be in it for each other in this state, and I don't see us going in that direction. And, you know, I
21 see this going in the wrong direction. I see -- you know, it's two steps back, one step forward, two steps
22 back, one step forward, and, you know, I am going to support this because I have to. I have to suck it up
and swallow this, but this is not where we should be going. And frankly it is bizarre to me that, you
know, Anthem would be supporting this when clearly Anthem was supporting statewide consolidation.

23 Mr. Robertson: Chairman Mayes, one final clarification. Perhaps I didn't make myself fully clear. I
24 don't perceive Anthem as being philosophically opposed to companywide consolidation as we moved
25 forward and looking at it in the context of the next case. But for purposes of this case in the next few
26 years, we strongly believe until we reach a point of companywide consolidation, then you should have
stand-alone rates for Anthem and Agua Fria respectively, which is what you have in the rest of the
company system. That doesn't mean that we couldn't be supportive of consolidation down the road
when we have a complete picture. (Emphasis added)

27 ¹⁸ Lawrence V. Robertson, Jr., [Open Meeting] Tr. 208:1-8.

28 ¹⁹ Cross-Examination of Thomas Broderick, [Deconsolidation] Tr. 184:21-25.

1 vis-à-vis the global settlement, they also universally accepted the global settlement.²⁰ In
2 addition to the Company and Anthem, Staff and RUCO commented during the Open
3 Meeting that the settlement presented a balanced approach to solving the various open
4 disputes.²¹ Similarly, the Commission, which possessed the full power and authority to
5 reject any portion or all of the settlement agreement, instead adopted the substance of the
6 agreement in its entirety and therefore expressly supported deconsolidation of the
7 Anthem/Agua Fria Wastewater District as a policy matter.²²

8 In that regard, it is clear from the record that the Commission envisioned
9 deconsolidation as the ultimate regulatory result, and only intended the instant phase of the
10 proceeding to be used to compile information sufficient for purposes of the design and
11 implementation of stand-alone rates for an Anthem wastewater district and an Agua Fria
12 wastewater district. The Commission now has the necessary data for that purpose.
13 Accordingly, the Commission should order deconsolidation of the Anthem/Agua Fria
14 Wastewater District at this time, in order to completely realize the purpose and intent of the
15 settlement agreement as subsumed in Decision No. 72047. It would be patently unfair for
16 the Commission to deny deconsolidation and thereby prevent Anthem from realizing that
17 settlement objective which was intended by the settling parties and approved by the
18 Commission.

19 **3. The Agua Fria Intervenors were afforded due process.**

20 The ROO recites that some of the Agua Fria Intervenors have objected to the
21 deconsolidation provision of the settlement agreement because of “due process issues” and
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24 ²⁰ For instance, Commissioner Newman stated “I am always seeking a settlement that could be recognized
by all parties.” [Open Meeting] Tr. 199:15-20.

25 ²¹ See Daniel Pozefsky, [Open Meeting] Tr. 210:9-9 (“And we think this presents a fair and balanced
26 proposal to address the issues that the ROO raised.”); and see Maureen Scott, [Open Meeting] Tr. 210:17-21
27 (“... we believe that the amendment appropriately balances the shareholders’ and ratepayers’ interests.”)

28 ²² “Good public policy requires the Commission to correctly assign cost responsibility for all ratemaking
components in as expeditious a manner as possible, and deconsolidation of Anthem/Agua Fria Wastewater
District is consistent with such action.” Decision No. 72047 at 84.

1 because they did not specifically agree to it.²³ However, due process only requires the
2 Agua Fria Interveners to have had both notice of and the opportunity for participation. The
3 Agua Fria Interveners had both. In fact, the Agua Fria Interveners were afforded a full and
4 fair opportunity to participate in the underlying proceeding (including the settlement
5 discussions), and for whatever reasons, they declined.²⁴ The Agua Fria Interveners
6 received notice of a potential 81% increase in wastewater rates and chose not to act.²⁵ The
7 Agua Fria Interveners received notice that full consolidation was being considered and they
8 chose not to act.²⁶ Since they received notice of the rate case, the Agua Fria Interveners
9 should have also understood that other issues affecting their water rates could also be
10 considered. Yet, they chose not to act. The fact that the Agua Fria Interveners were not
11 represented in the previous phase of these proceeding and in the settlement discussions that
12 led to this phase of the proceeding is a direct result of their own respective choices not to
13 participate. Accordingly, Anthem wastewater ratepayers should not be prevented from
14 realizing the benefit of the settlement agreement, nor should they be punished to the tune of
15 \$2.4 million each year, because the Agua Fria Interveners chose not to act.²⁷

16
17 ²³ ROO at 15. Anthem notes that it is unfair and unrealistic to suggest that Anthem needed to or could
18 secure the Agua Fria Interveners' consent in order for Anthem to stop subsidizing the Agua Fria
19 Interveners' wastewater bills. Further, if the Commission can't honor the settlement agreement set forth in
20 Decision No. 72047 because the Agua Fria Interveners did not consent to the settlement, then (i) parties who
21 dedicate the time, resources, and attention to participate in Commission proceedings can always be unfairly
prevented from realizing settlements by ratepayers who choose to be disengaged, and (ii) by logical
extension, the Commission can be prevented from implementing any order that adversely affects a ratepayer
not actively participating in the underlying proceedings. By way of another example, the Commission could
never order a rate increase if an affected district simply chose not to intervene in the ratemaking
proceedings. This is an absurdity.

22 ²⁴ DMB did intervene in the underlying proceeding.

23 ²⁵ See Verrado Community Association, Inc.'s Initial Closing Brief, filed January 17, 2012 at 2.
24 Verrado's counsel admits that even if the Aqua Fria Interveners had known the full amount of the
wastewater rate increase, they may not have fully participated in the underlying proceeding. *See id.* at 5.

25 ²⁶ Cross-Examination of David Nilsen, [Deconsolidation] Tr. 415:5-416:25.

26 ²⁷ Anthem notes that the Agua Fria Interveners have benefitted from some provisions of the settlement
27 agreement including the lower rate of return and delayed implementation of the winter average rate design.
28 *See* Decision No. 72047 at 44-45. It is contradictory for the Agua Fria Interveners to avail themselves of
some portions of the settlement agreement while arguing that they shouldn't be subject to less favorable
provisions.

1 **C. The Commission and the ROO Recognize the Importance of Properly**
2 **Assigning Cost Responsibility. Yet, the ROO Does Not Take Any Step in**
3 **that Direction. In this Case, the ROO Makes the Perfect the Enemy of**
4 **the Good by Failing to Implement Appropriate Relief for 8,800 Utility**
5 **Customers in Favor of Waiting for a Consolidation Scenario that Has**
6 **Already Been Rejected by the Commission in the Instant Proceedings**
7 **and Has Little Hope of Imminent Adoption.**

8 **1. Maintaining the status quo harms Anthem ratepayers.**

9 The ROO recognizes the importance of properly assigning cost responsibility. One
10 of the justifications that the ROO relies on to deny deconsolidation is that “deconsolidating
11 only the Anthem service area from the district would not ‘correctly assign cost
12 responsibility for all ratemaking components’ in a manner any better than the status quo.”²⁸
13 However, Anthem strongly believes that eliminating the massive \$2.4 million annual
14 subsidy being paid by Anthem wastewater customers on behalf of Agua Fria wastewater
15 customers resulting from the unfair and inappropriate shift of Agua Fria’s cost
16 responsibility for the Northwest Plant, the Verrado Reclamation Facility, and the Russell
17 Ranch Reclamation Facility is indeed better than the status quo and would be an important
18 step in implementing the Commission’s directive set forth in Decision No. 72047.²⁹
19 Whether additional steps may need to be taken in the future to correctly assign cost
20 responsibility as between the Agua Fria Interveners is outside the scope of this limited
21 proceeding and should be explored at the option, cost and expense of the Agua Fria
22 Interveners in the future. In any event, the correct assignment of cost responsibility vis-à-
23 vis the Anthem service area and the Agua Fria service area should not be dodged or
24 delayed. The ROO makes the perfect the enemy of the good and by doing so fails to
25 provide the 8,800 Anthem wastewater customers with a remedy that is just, reasonable, and
26 consistent with the Commission’s prior directive. The facts in the instant proceedings
27 clearly demonstrate that Anthem should not have any responsibility for ratemaking
28 components associated with the Northwest Plant, the Verrado Reclamation Facility or the

29 ²⁸ ROO at 32.

30 ²⁹ “Good public policy requires the Commission to correctly assign cost responsibility for all ratemaking
31 components in as expeditious a manner as possible, and deconsolidation of Anthem/Agua Fria Wastewater
32 District is consistent with such action.” Decision No. 72047 at 84.

1 Russell Ranch Reclamation Facility; and therefore deconsolidation of Anthem from the
2 Anthem/Agua Fria Wastewater District is now warranted.

3 **2. Consolidation is an “extremely hard uphill battle.”³⁰**

4 Instead of expeditiously assigning cost responsibility between the Anthem
5 wastewater district and the Agua Fria wastewater district as directed by the Commission in
6 Decision No. 72047, the ROO recommends that no action be taken until some unspecified
7 time in the future when full consolidation/deconsolidation scenarios may again be
8 considered.³¹ However, this approach does not provide any meaningful resolution since
9 company-wide consolidation is not imminent.³² In the instant proceedings, the
10 Commission already has fully and recently considered, and rejected, three consolidation
11 proposals.³³ Further, the ROO does not order and the Company has not determined a future
12 year in which it will file for Company-wide consolidation in compliance with Decision No.
13 72047.³⁴ Further, even if total consolidation is reconsidered by the Commission within the
14 next several years, the record reflects that statewide consolidation of the Company’s water
15 and wastewater districts is not widely supported and would be extremely difficult to
16 accomplish.³⁵ In fact, “Corte Bella admits that full consolidation of all of Arizona-
17 American’s districts remains controversial and that there is no guarantee full consolidation
18 will ever occur.”³⁶ Therefore, Anthem ratepayers should not have to wait for this issue to
19

20 ³⁰ Cross-Examination of Thomas Broderick, [Deconsolidation] Tr. 199:17-22.

21 ³¹ ROO at 33.

22 ³² See Cross-Examination of Dan L. Neidlinger, [Deconsolidation] Tr. 323:22-24.

23 ³³ Decision No. 72047 at 84.

24 ³⁴ ROO at 33; Exh. Anthem-12; Cross-Examination of Sandra L. Murrey, [Deconsolidation] Tr. 85:23-
25 86:14.

26 ³⁵ Cross-Examination of Thomas Broderick, [Deconsolidation] Tr. 199:1-24 (explaining that
27 deconsolidation of the Anthem/Agua Fria Wastewater District will not impair future consolidation because
future consolidation is “extremely, extremely difficult to achieve” and “an extremely hard uphill battle.”);
RUCO’s Closing Brief, filed July 16, 2010 at 61.

28 ³⁶ Post-Hearing Brief of Corte Bella County Club Association, Inc., filed January 17, 2012 at 7.

1 be resolved through the full consolidation of the Company's districts at some as yet
2 unforeseeable point in the future, particularly when they are paying the \$2.4 million
3 subsidy in each year in the interim under the existing wastewater rate structure.

4 **3. Anthem should not have to wait to receive relief.**

5 The ROO also recommends delaying consideration of deconsolidation until a future
6 rate proceeding in order to allow all affected parties to receive notice of and have a full
7 opportunity to address issues related to consolidation and deconsolidation.³⁷ However, the
8 Agua Fria Intervenors have had notice of, and the opportunity to participate in each phase
9 of the instant proceedings, and have fully participated in this phase of the instant
10 proceedings. The Agua Fria Intervenors have had ample opportunity to file data requests,
11 vet all compiled information, cross-examine the Company's experts, offer their own
12 witnesses, hire experts, offer public comments, and develop solutions to mitigate the
13 potential rate increases.³⁸ Delaying reconsideration of deconsolidation until some future
14 rate case would not provide the Agua Fria Intervenors any meaningful opportunity to
15 participate that they have not already been afforded.

16 In that regard, it is appropriate to observe that while they are now fully participating
17 in the proceeding, the Agua Fria Intervenors have not offered any meaningful solution to
18 their own problem of rising wastewater charges other than to suggest that Anthem continue
19 to subsidize them. In every instance, Verrado, Corte Bella and DMB's singular answer is
20 to deny deconsolidation and make Anthem keep paying the massive annual subsidy. Not
21 one of them has proposed a single remedy that is not at Anthem's expense nor has any one
22

23 ³⁷ ROO at 33.

24 ³⁸ For example, Verrado wants "a full opportunity to investigate the reason for the significant cost of
25 service in the Aqua Fria areas." Verrado Community Association, Inc.'s Initial Closing Brief, filed January
26 17, 2012 at 5. Verrado has had the opportunity to pursue this issue, and in fact did so. In response to a data
27 requests posed by Verrado and Corte Bella on the matter, the Company indicated that the main factors
28 contributing to the disparity in deconsolidated rates are the "Northwest Valley Regional Reclamation
Facility, the Verrado Reclamation Facility and its expansion as well as the Russell Ranch Reclamation
Facility." Exh. Anthem-7. Verrado was free to pursue the issue further through additional data requests,
consulting an expert, or cross-examining the Company's witnesses, at Verrado's discretion, but failed to do
so.

1 of them investigated any relief beyond continuing the status quo. Anthem's collective
2 pocketbook should not be the remedy for Agua Fria's wastewater rate problems. By way
3 of contrast, Anthem invested significant resources and energy to develop solutions to its
4 own increasing water and wastewater rates and helped the Agua Fria ratepayers in the
5 process. More specifically, Anthem intervened in the underlying proceeding, developed a
6 plan to mitigate its own rate shock, advocated for a delay in winter-average rate design in
7 order to give residents enough time to institute conservation measures, supported
8 reallocation of costs associated with the Northwest Plant, negotiated a lower cost of capital,
9 and advocated for company-wide consolidation.

10 Against this background, it is patently unfair for the ROO to allow the Agua Fria
11 Interveners to repeatedly sit on the sidelines while Anthem expends its resources, watch the
12 game unfold and then come in after the fact, protest the result and ask that Anthem play
13 another game in the distant future in which the Agua Fria Interveners may or may not
14 decide to participate. Because there is nothing to suggest that the Agua Fria Interveners
15 would take a different position on deconsolidation in a future proceeding and because they
16 have been afforded a meaningful opportunity to participate now, Anthem ratepayers should
17 not have to wait for a future rate case in order to receive relief from the massive subsidy
18 burden they currently bear. The Commission was explicit that the issue of deconsolidation
19 should be decided "in as expeditious a manner as possible" and the further delay advocated
20 by the ROO is entirely inconsistent with that instruction.

21 **D. Article 15, Section 3 of the Arizona Constitution authorizes and requires**
22 **the Commission to prescribe "just and reasonable rates and charges."**
23 **Indefinitely forcing Anthem wastewater ratepayers to continue to pay an**
24 **annual \$2.4 million subsidy for the sole purpose of providing artificially**
lower rates to Agua Fria wastewater customers is neither just nor
reasonable.

25 Article 15, Section 3 of the Arizona Constitution provides in pertinent part that:

26 The Corporation Commission shall have full power to, and shall
27 prescribe . . . just and reasonable rates and charges to be made
28 and collected, by public service corporations within the State for
service rendered therein. . . (Emphasis added)

Clearly, in Anthem's view, requiring Anthem wastewater customers to indefinitely

1 continue to pay a massive annual \$2.4 million subsidy³⁹ on behalf of the Agua Fria
2 wastewater ratepayers as envisioned under the ROO's recommendations is not "just and
3 reasonable" with respect to Anthem's wastewater ratepayers. Further, in this instance, any
4 non-cost considerations which might mitigate against deconsolidation of the Anthem/Agua
5 Fria Wastewater District are not sufficient to justify the magnitude of the subsidy being
6 provided by the Anthem wastewater ratepayers to the Agua Fria wastewater ratepayers. In
7 fact, the non-cost considerations in this instance include benefits of consolidation that flow,
8 unearned and unfairly, exclusively to Agua Fria ratepayers at Anthem's cost and expense.
9 More specifically, lower rates for Agua Fria wastewater customers, affordability for Agua
10 Fria wastewater customers and gradualism in Agua Fria wastewater rates are all financed
11 by Anthem's multi-million dollar annual subsidy. As RUCO has recognized, "the record
12 does not identify any benefit Anthem receives in exchange for subsidizing Agua Fria's
13 rates."⁴⁰ It is unjust and unreasonable to ask the Anthem residents to annually pay millions
14 to subsidize benefits for others that Anthem ratepayers do not, and for the foreseeable
15 future will not, receive.

16 **E. There is No Actual Evidence in the Record that the \$2.4 Million Annual**
17 **Subsidy Being Paid by the Anthem Wastewater Ratepayers on behalf of**
18 **the Agua Fria Wastewater Ratepayers May "Eventually Zero Out."**
19 **Further, the ROO Ignores the Massive Subsidy Payments Accumulating**
20 **in each Year that such a Zeroing Out Continues To Be Merely**
21 **Speculative.**

22 In an attempt to find value for Anthem wastewater ratepayers in exchange for their
23 multimillion dollar annual subsidy, the ROO suggests that "it is quite possible that the
24 current subsidy will eventually zero out, and may even shift in favor of the Anthem service
25 area over time."⁴¹ However, there is absolutely no factual data in the record to support this

26 ³⁹ Direct Examination of Dan L. Neidlinger, [Deconsolidation] Tr. 288:23-289:3. The \$2.4 million
27 represents the increase over today's revenues to the proposed stand-alone Aqua Fria wastewater district and
28 the corresponding decrease to the proposed stand-alone Anthem wastewater district. Redirect examination
of Dan L. Neidlinger, [Deconsolidation] Tr. 633:12.

⁴⁰ RUCO's Opening Brief, filed January 17, 2012 at 4.

⁴¹ ROO at 32-33.

1 conjecture. In fact, the Agua Fria area has not developed as rapidly as anticipated and the
2 area is likely to experience a sustained delay in recovery.⁴² In addition, according to data
3 provided by the Company, the costs associated with carrying out the projected five-year
4 capital improvement plan for the Agua Fria wastewater system are higher than the costs
5 associated with carrying out the projected five-year capital improvement plan for the
6 Anthem wastewater system, thus indicating that if deconsolidation is denied, Anthem is
7 likely to continue to subsidize Agua Fria into the foreseeable future.⁴³ Further, there is
8 nothing in the record which supports the notion that Agua Fria wastewater customers have
9 subsidized Anthem wastewater customers at any point in the past, or will subsidize them in
10 the foreseeable future. Nonetheless, the ROO entirely ignores that in each year that such a
11 balancing does not materialize and remains merely speculative, the Anthem wastewater
12 ratepayers are paying the huge \$2.4 million subsidy under the existing wastewater rate
13 structure. This is neither fair nor expeditious and given these circumstances, the
14 Commission should immediately correct the imbalance in cost recovery responsibility
15 which results from the existing Anthem/Agua Fria Wastewater District consolidated rate
16 structure.

17 **F. The Facts Do Not Support the Inclusion of Anthem in the Anthem/Agua**
18 **Fria Wastewater District for Ratemaking Purposes. Anthem Is Not**
19 **Consolidated with the Agua Fria Area for any Other Purpose. On the**
20 **Other Hand, the Agua Fria Wastewater District Operates as a**
21 **Consolidated Business Unit and Comprises a Consolidated Water**
22 **District. Therefore, Deconsolidation in this Instance Is Not Arbitrary.**

23 By ordering immediate deconsolidation of the Anthem/Agua Fria Wastewater
24 District, the Commission would be treating Anthem fairly and consistently with the other

25 ⁴² In attempting to determine the appropriate allocation of the Northwest Plant between the Anthem/Agua
26 Fria Wastewater District and Sun City West, Staff estimated that there would be 6,392 AAWC wastewater
27 customers in the Agua Fria area by the end of 2011. See Direct Testimony of Dorothy M. Haines, filed
28 March 8, 2010, DMH-4 at 6. However, as of September 30, 2011, there are only 5,289 AAWC wastewater
customers in the Agua Fria area, reflecting a current deficit of 1,103 projected customers as of September
30, 2011 and a projection error of approximately 18% or nearly one-fifth. See Closing Brief on the
Deconsolidation of the Anthem/Agua Fria Wastewater, Russell Ranch Homeowner's Association, Inc., filed
January 17, 2012 at 5.

⁴³ Exh. Anthem-10.

1 water and wastewater districts in the underlying case. In Decision No. 72047, the
2 Commission rejected consolidation with respect to all of the Company's other water and
3 wastewater districts in question.⁴⁴ Therefore, it would be completely arbitrary to require
4 the Anthem/Agua Fria Wastewater District to remain consolidated for the purpose of
5 maintaining artificially low wastewater rates for Agua Fria residents. Further, the Anthem
6 wastewater district and the Agua Fria wastewater district are neither physically connected
7 nor geographically close.⁴⁵ In addition, for business purposes, the two districts are not
8 accounted for as a single district; the Anthem wastewater district is accounted separately
9 from the Agua Fria wastewater district. Also, the Commission has kept the Anthem Water
10 District and the Agua Fria Water District separate.⁴⁶ Contrary to statement set forth in the
11 ROO "that partial deconsolidation would result in an arbitrary division of the district,"⁴⁷
12 there are many natural divisions between the Anthem wastewater district and the Agua Fria
13 wastewater district that support the deconsolidation of only Anthem.

14 Conversely, there are many commonalities among the service areas within the Agua
15 Fria wastewater district that justify keeping the Agua Fria wastewater district consolidated
16 until such time that the Commission is willing and able to explore potential realignment,
17 either through deconsolidation or consolidation. For example, as set forth on Exhibit A
18 attached hereto, the Agua Fria wastewater service area comprises the Agua Fria Water
19 District; and, each of Corte Bella, DMB, Verrado, and Russell Ranch use, and dispose of,
20 water from the same water district.⁴⁸ In this sense, it is true that Agua Fria water and
21 wastewater customers receive "identical services from the same company in the same
22

23 ⁴⁴ Decision No. 72047 at 84.

24 ⁴⁵ Exhibit A attached hereto. Exhibit A is derived from maps provided in the Direct Testimony of
25 Dorothy M. Hains, Exh. DMH-3 Figure 1 and DMH-4 Figure 1.

26 ⁴⁶ RUCO's Opening Brief, filed January 17, 2012 at 4.

27 ⁴⁷ ROO at 32.

28 ⁴⁸ Exhibit A attached hereto.

1 area.”⁴⁹ Further, the Anthem wastewater district and the Agua Fria wastewater district are
2 already operated by the Company as separate business units.⁵⁰ Thus, deconsolidating only
3 Anthem is entirely consistent with the Company’s treatment of the Anthem/Agua Fria
4 Wastewater District.

5 **G. The ROO Incorrectly States that the Geographical Configuration of the**
6 **Agua Fria Service Area Was Not Known by the Commission at the Time**
7 **the Settlement Agreement was Approved by the Commission.**

8 The ROO erroneously states that “the geographic configuration of the Agua Fria
9 service area and its infrastructure . . . only came to light in the course of this
10 deconsolidation proceeding” and repeatedly cites this purported revelation as a basis for
11 ignoring the Commission’s directive set forth in Decision No. 72047.⁵¹ However, the
12 geographical configuration and infrastructure of the Agua Fria wastewater district was
13 known by the Commission at the time that the settlement agreement was approved and
14 Decision No. 72047 was issued. In fact, in Intervener Anthem Community Council’s
15 Initial Post-Hearing Brief, filed July 16, 2010, in support of its request for deconsolidation,
16 Anthem itself pointed out “that none of the four wastewater facilities in the Anthem/Agua
17 Fria wastewater district are connected.”⁵² Further, an extensive engineering report filed in
18 the Direct Testimony of Dorothy Haines on March 28, 2010 clearly described and showed
19 the composition of the “Agua Fria Wastewater District.”⁵³ Therefore, the Commission
20 knew, or had reason to know, the configuration of the Agua Fria wastewater district that

21 ⁴⁹ Verrado Community Association, Inc.’s Initial Closing Brief, filed January 17, 2012 at 9.

22 ⁵⁰ Cross-Examination of Sandra L. Murrey, [Deconsolidation] Tr. 82:9-83:18.

23 ⁵¹ ROO at 30-33. The ROO repeatedly focuses on the fact that three unconnected service areas will
24 remain in the Agua Fria wastewater district if deconsolidation of the Anthem/Agua Fria Wastewater District
is approved.

25 ⁵² Intervener Anthem Community Council’s Initial Post-Hearing Brief, filed July 16, 2010 at 20 (citing
26 Exh. Anthem-7 response to Anthem data request 6.2). *See also* Direct Testimony of Dorothy M. Hains,
27 Exh. S-7 at 13, Exhibit DMH-3 Figure 1 for a map depicting the geographical distance between the Anthem
and Agua Fria wastewater districts.

28 ⁵³ Exhibit DMH-4 at p. 1-4, Figure 1. This testimony was filed over a year before Decision No. 72047
was issued on January 6, 2011.

1 would remain following the deconsolidation of Anthem from the Anthem/Agua Fria
2 Wastewater District, and yet the Commission still supported deconsolidation. Therefore,
3 the suggestion in the ROO that Decision No. 72047 was made without the benefit of the
4 aforeseaid geographical data, and therefore adherence to Decision No. 72047 will create an
5 unknown, unintended and arbitrary result, is incorrect.

6 **H. The Adoption of Dan Neidlinger's Phase-In Plan Mitigates, to Some**
7 **Extent, the Significant Rate Increases Resulting from Deconsolidation of**
8 **the Anthem/Agua Fria Wastewater District.**

9 Having experienced rate shock resulting from the implementation of the phased-in
10 water and wastewater rates set forth in Decision No. 72047, Anthem is sensitive to the
11 Agua Fria Interveners' concerns regarding the attendant rate shock associated with
12 deconsolidation.⁵⁴ Therefore, through its proposed revenue transition plan, which is
13 supported by RUCO and appreciated by some Agua Fria Interveners,⁵⁵ Anthem is willing
14 to pay more⁵⁶ in wastewater rates during the three-step transition period, in order to allow
15 for smoother implementation of stand-alone rates for Anthem and Agua Fria wastewater
16 customers.⁵⁷ Accordingly, the ROO should be amended to include implementation of Mr.
17 Neidlinger's phase-in plan.

18 **IV. CONCLUSION.**

19 For the reasons discussed above and based upon the record in the instant
20 proceedings, Anthem respectfully requests the Commission to modify the ROO and enter
21 an opinion and order (i) providing for the immediate deconsolidation of the Anthem/Agua
22 Fria Wastewater District and (ii) adopting stand-alone rates for the resulting Anthem

23 ⁵⁴ See Redirect Examination of William Rigsby [Deconsolidation] Tr. 565:9-18 (stating that even if the
24 Commission orders deconsolidation, and if the Commission adopts Mr. Neidlinger's revenue transition
25 plan, Anthem's rate will still remain elevated).

26 ⁵⁵ RUCO's Opening Brief, filed January 17, 2012 at 2, Cross-Examination of Melinda Gulick,
27 [Deconsolidation] Tr. 356:12-20; Cross-Examination of Kent Simer [Deconsolidation] Tr. 360:10-17.

28 ⁵⁶ These excess amounts are in addition the massive subsidies that Anthem ratepayers have already paid for
the benefit of the Agua Fria Interveners since the rates ordered by Decision No. 72047 went into effect.

⁵⁷ For a more complete description of Mr. Neidlinger's revenue transition plan, see Anthem Community
Council's Initial Post-Hearing Brief (Deconsolidation), filed January 17, 2012 at 9-10.

1 wastewater district and Agua Fria wastewater district, utilizing Mr. Neidlinger's proposed
2 revenue transition plan. Such action by the Commission would implement its conclusion,
3 expressed merely a year ago that: "Good public policy requires the Commission to
4 correctly assign cost responsibility for all ratemaking components in as expeditious a
5 manner as possible, and deconsolidation of Anthem/Agua Fria Wastewater District is
6 consistent with such action."⁵⁸

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28 ⁵⁸ Decision No. 72047 at 84.

1 DATED this 27th day of April, 2012.

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EXHIBIT A

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Maricopa County

Arizona American Water Company (Water)

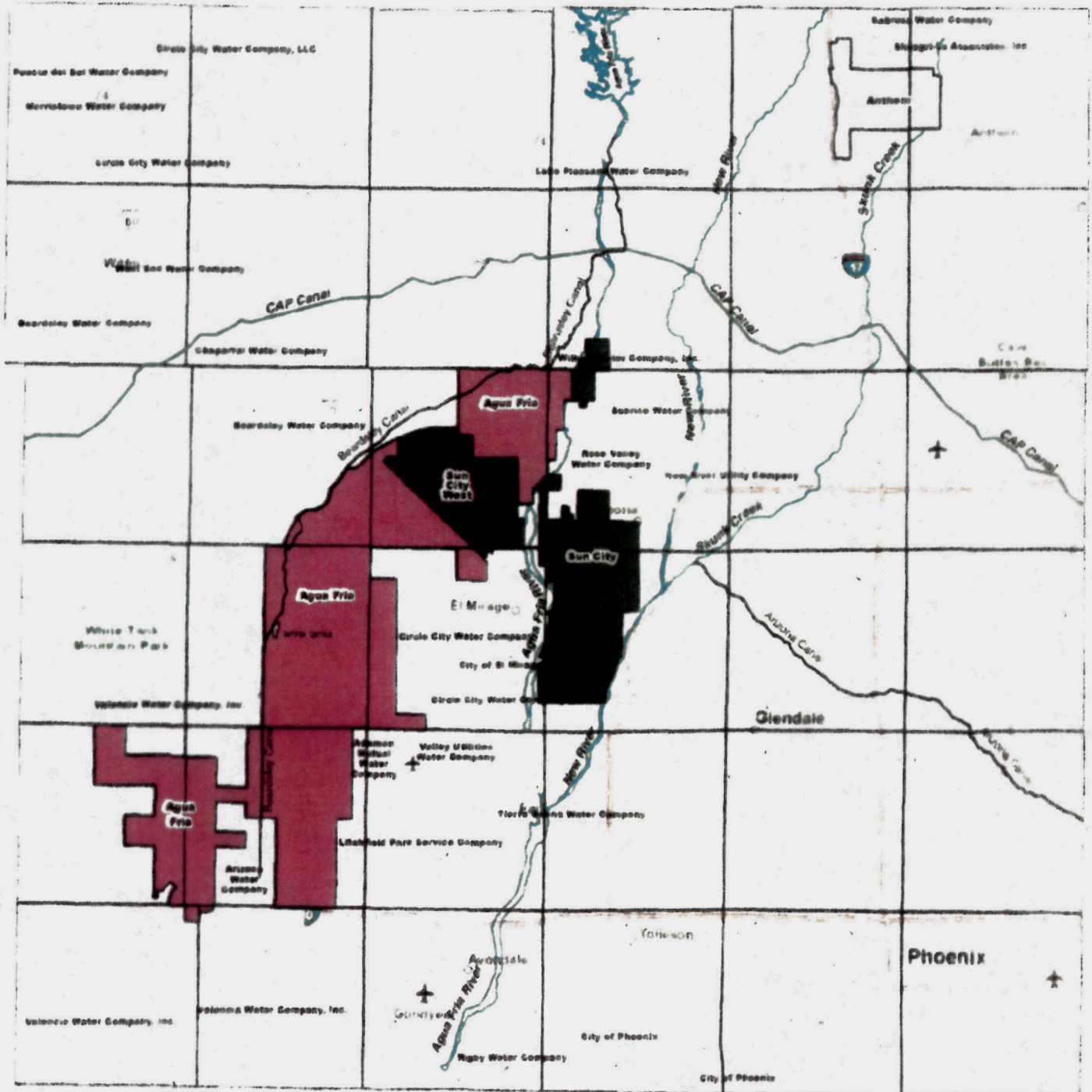
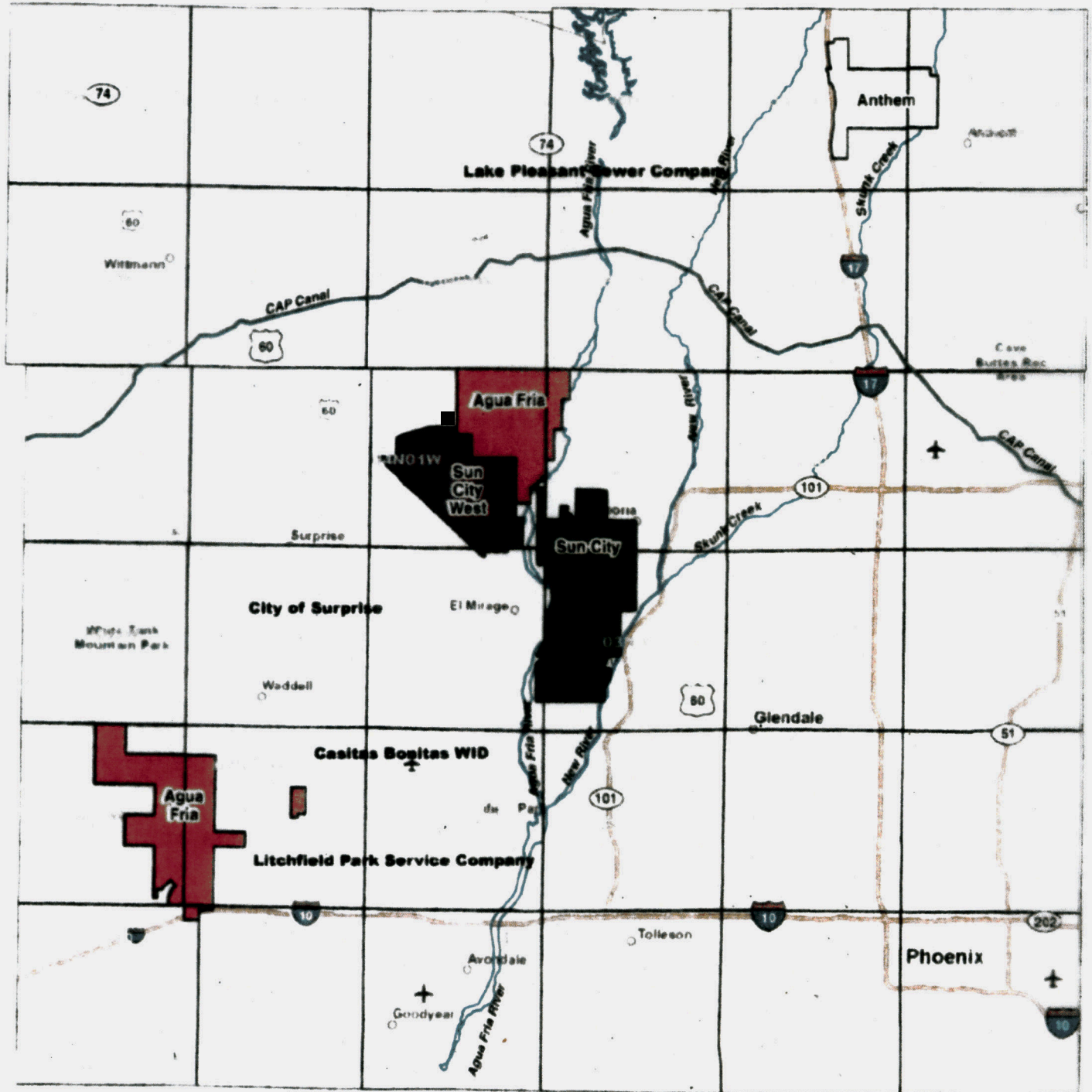


EXHIBIT A



Maricopa County

Arizona American Water Company (Sewer)

DECISION NO. _____

ATTACHMENT 1

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ANTHEM PROPOSED AMENDMENTS NO. 1

DATE PREPARED: APRIL 27, 2012

COMPANY: EPCOR Water USA

DOCKET NOS.: W-01303A-09-0343 and SW-01303A-09-0343

OPEN MEETING DATE: To Be Determined

AGENDA ITEM NO.: To Be Determined

Page 5, Line 11 through 15 **DELETE**:

"The evidence in this proceeding brought to light the fact that the territory of the Anthem-Agua Fria Wastewater district is actually comprised of not simply two non-contiguous service areas served by two separate wastewater systems, an "Anthem Wastewater service area" and an "Agua Fria Wastewater service area," but instead of four non-contiguous service areas served by separate wastewater systems."

Page 6, Line 23 through Page 7, Line 1 **DELETE**:

"No evidence was presented in this case on the rate effects of deconsolidating all four of the existing service areas in the Anthem-Agua Fria Wastewater district."

AND REPLACE WITH:

"Because Decision No. 72047 limited the scope of these proceedings to deconsolidation of Anthem from the Anthem/Agua Fria Wastewater District, no evidence was presented in this case on the rate effects of deconsolidating all four of the existing service areas in the Anthem-Agua Fria Wastewater district."

Page 30, Line 17 through Line 19 **DELETE**:

"Based on information regarding the geographic configuration of the Agua Fria service area and its infrastructure, which only came to light in the course of this deconsolidation proceeding, we must disagree."

AND REPLACE WITH:

"We agree."

Page 30, Line 21 through Page 31, Line 1 **DELETE**:

"Based on the evidence presented in this docket following the issuance of Decision No. 72047, we

find that contrary to Anthem's contentions, it would be arbitrary to deconsolidate the Anthem-Agua Fria Wastewater district in the matter urged at this time, and that the resulting rates would not be just and reasonable."

AND REPLACE WITH:

"Maintaining the Anthem-Agua Fria Wastewater District as the sole consolidated district from the underlying proceedings for the purpose of artificially lowering the wastewater rates for Agua Fria residents would not result in just and reasonable rates for Anthem residents who are paying a \$2.4 million annual subsidy on behalf of the Agua Fria wastewater customers.¹ It is without dispute that the large disparity in deconsolidated rates is due to the "Northwest Valley Plant, the Verrado Reclamation Facility and its expansion as well as the Russell Ranch Reclamation Facility."² By virtue of geographic separation and no interconnection facilities, Anthem residents do not and cannot use the Northwest Valley Plant, the Verrado Reclamation Facility or the Russell Ranch Reclamation Facility. Whereas, Agua Fria wastewater customers do utilize them. Therefore, in order to implement the Commission's specific directive to assign "cost responsibility for ratemaking components in as expeditious manner as possible," we must at a minimum deconsolidate Anthem from the Anthem/Agua Fria Wastewater District at this time."

DELETE Page 31, Line 6 through Page 33 Line 19

AND REPLACE WITH:

"Of the numerous arguments made by Anthem and RUCO in support of deconsolidation of the Anthem service area from the Anthem-Aqua Fria Wastewater district, none sufficiently speak to the issue of the partial consolidation that would be left as a result. RUCO argued that separate rates for separate systems respect the principle of traditional cost of service ratemaking and ensure that those who use utility services pay for them.³ However, deconsolidating only the Anthem service area will not result in separate rates for separate systems with respect to the Agua Fria service area. While RUCO stated that it was critical to its analysis of the deconsolidation issue that the Anthem wastewater system shares no infrastructure with, and is located several miles away from the other wastewater systems in the Anthem-Aqua Fria Wastewater district,⁴ deconsolidating the Anthem service area from the rest of the Anthem-Aqua Fria Wastewater district leaves the three remaining service areas in the same position, sharing no infrastructure with, and located several miles away from, the other wastewater systems in the Anthem-Aqua Fria Wastewater district. Notably, RUCO did not take the opportunity to file a Reply Brief, and thus did not address the infirmities in its case occasioned by its initial misunderstanding of the fact that the Anthem-Aqua Fria Wastewater district is comprised of not two, but four geographically separate service

¹ Direct Examination of Dan L. Neidlinger, [Deconsolidation] Tr. 288:23-289:3. \$2.4 million represents the increase over today's revenues to the proposed stand-alone Aqua Fria wastewater district and the corresponding decrease to the proposed stand-alone Anthem wastewater district. Redirect examination of Dan L. Neidlinger, [Deconsolidation] Tr. 633:12.

² Exh. Anthem-7.

³ RUCO Br. at 2.

⁴ *Id.* at 3-4.

areas.⁵

While the Commission recognizes these potential issues related to the partial consolidation of the Agua Fria wastewater district remaining after Anthem is deconsolidated from the Anthem/Agua Fria Wastewater district, complete deconsolidation of the Agua Fria wastewater service area is beyond the limited scope of this phase of the proceedings as determined by Decision No. 72047. Therefore, the Commission will explore potential realignment of the Agua Fria wastewater district, either through further deconsolidation or consolidation, in a subsequent rate case that includes all affected districts, including the Sun City West Wastewater district. To that end, in addition to the consolidation proposals already ordered by Decision No. 72047, the Commission will order the Company to prepare cost of service studies and other information sufficient to determine the rate effects of deconsolidating all four of the existing service areas in the remaining Agua Fria Wastewater district. In the interim, we will also order the implementation of stand-alone rates for Anthem and Agua Fria wastewater customers using Mr. Dan Neidlinger's revenue transition plan as a method to mitigate, to some extent, the attendant rate shock associated with deconsolidation and to allow for smoother implementation of stand-alone rates for Anthem and Agua Fria wastewater customers.⁶

In this instance the Commission is faced with difficult choices. We recognize that the path that led us to this deconsolidation proceeding was also fraught with difficult choices. In the December 15, 2010 Open Meeting related to the underlying proceedings, the Commission encouraged the parties to negotiate the settlement of contentious legal and equitable issues involving the disputed refund payments that the Company paid to Pulte.⁷ As part of the settlement agreement that was ultimately reached, Anthem surrendered its compelling arguments against recognizing the disputed refund payments for ratemaking purposes, because of the gains that Anthem would make in other areas under the settlement agreement, including through the timely deconsolidation of the Anthem/Agua Fria Wastewater District.⁸ It is well documented in the record that deconsolidation of the Anthem/Agua Fria Wastewater District was vital to Anthem's willingness "to support this settlement as a complete package"⁹ Therefore, it would be patently

⁵ See RUCO Notice of Filing dated February 7, 2012. Staff also did not avail itself of the opportunity to file a Reply Brief, but took no position on deconsolidation. See Staff filing dated February 7, 2012.

⁶ For a more complete description of Mr. Neidlinger's revenue transition plan, see Anthem Community Council's Initial Post-Hearing Brief (Deconsolidation), filed January 17, 2012 at 9-10.

⁷ See Chairman Kristin K. Mayes, *et. al*, [Open Meeting] Tr. 198:11-202:7. Commissioner Pierce, Commissioner Newman, and Commissioner Kennedy also voiced support for a settlement among the parties. See *id.* And see Cross-Examination of Thomas Broderick, [Deconsolidation] Tr. 272:15-17 ("Any party to the case at that point could have joined. The door was open. Any party in the room was welcome in there.")

⁸ Lawrence V. Robertson, Jr., [Open Meeting] Tr. 208:1-8.

⁹ *Id.* Specifically, Mr. Robertson stated that even if the Commission thereafter ordered company-wide consolidation at some future date, deconsolidation of the Anthem/Agua Fria Wastewater District in the interim, even if just for few years, was (i) a worthy objective, (ii) very important to the Anthem community, and (iii) an interrelated part of the complete settlement deal. Thomas Broderick similarly recalled Anthem's request for deconsolidation was "an absolutely adamant position by the Anthem Community Council. We would not have reached a settlement that afternoon had we not agreed to provide the information in support of a deconsolidation proceeding." Cross-Examination of Thomas Broderick, [Deconsolidation] Tr. 184:21-25.

unfair for us to deny deconsolidation and thereby prevent Anthem from realizing that settlement objective that was expressly supported by the Commission as a policy matter.¹⁰

Further, while we understand that the parties in the Agua Fria wastewater district want to delay consideration of deconsolidation until a future rate proceeding, keeping the Anthem/Agua Fria Wastewater District fully consolidated does nothing to implement Decision No. 72047 recognizing that: "Good public policy requires the Commission to correctly assign cost responsibility for all ratemaking components in as expeditious a manner as possible, and deconsolidation of Anthem/Agua Fria Wastewater District is consistent with such action." Further, delaying reconsideration of deconsolidation until some future rate case would not provide the Agua Fria residents with any meaningful opportunity to participate that they have not already been afforded. The Agua Fria parties have had notice of, and the opportunity to participate in each phase of these proceedings, and they fully participated in this phase of the instant proceedings. Therefore, Anthem ratepayers should not have to wait for a future rate case in order to receive relief from the massive subsidy burden they currently bear. We were explicit that the issue of deconsolidation should be decided "in as expeditious a manner as possible" and the further delay is entirely inconsistent with that instruction.

The fairest and most expeditious way to address the issue of deconsolidation/consolidation is to order the immediate deconsolidation of the Anthem/Agua Fria Wastewater District and the adoption of stand-alone rates for the resulting Anthem wastewater district and Agua Fria wastewater district, utilizing Mr. Neidlinger's proposed revenue transition plan. Further, the Company is ordered to make a rate filing considering the realignment of the Agua Fria wastewater district that includes all of the affected districts, including the Sun City West Wastewater district.¹¹ In that rate case, all affected parties will receive notice of, and will have a full opportunity to address, all the issues affecting the Company's revenue requirement, and can make proposals either for or against realignment. Decision No. 72047 has already ordered the Company to develop a consolidation proposal that includes all of its systems, as well as all of its systems without Sun City, and to file those consolidation proposals with a future rate application, and the rate designs authorized in Decision No. 74072 were adopted with an eye toward ease of moving toward consolidation tariffs in the future."

MAKE CONFORMING CHANGES

¹⁰ "Good public policy requires the Commission to correctly assign cost responsibility for all ratemaking components in as expeditious a manner as possible, and deconsolidation of Anthem/Agua Fria Wastewater District is consistent with such action." Decision No. 72047 at 84.

¹¹ Verrado br. At 9.